

HOUSE BILL NO. HB0040

Grain indemnity account.

Sponsored by: Joint Agriculture, Public Lands and Water Resources Interim Committee

A BILL

for

1 AN ACT relating to agriculture; creating the grain
2 indemnity account; providing for assessments; establishing
3 penalties; providing for hearing procedures and
4 inspections; providing for claims and payment; requiring
5 bonds for warehousemen in certain cases; providing for an
6 appropriation; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 11-48-101 through 11-48-119 are
11 created to read:

12

13

CHAPTER 48

14

GRAIN INDEMNITY PROGRAM

15

16

11-48-101. Short title.

1

2 This chapter is known and may be cited as the "Wyoming Grain
3 Indemnity Account Program".

4

5 **11-48-102. Definitions.**

6

7 (a) As used in this chapter:

8

9 (i) "Account" means the Wyoming grain indemnity
10 account;

11

12 (ii) "Advisory committee" means the members
13 designated pursuant to W.S. 11-48-104(a);

14

15 (iii) "Cash sale" means payment to the depositor
16 by the warehouseman contemporaneously with the transfer of
17 grain to the warehouse;

18

19 (iv) "Credit sale contract" means a written
20 agreement describing the transfer of a specific quantity of
21 grain by the depositor to the warehouse with the price or
22 payment to be made by the warehouseman to the depositor at
23 a later date or on the occurrence of a specific event
24 expressed in the agreement;

1

2 (v) "Open storage" means the deposit of grain by
3 the depositor for a period of time with the subsequent
4 disposition of the same grain or an equal or like value and
5 quantity if agreed to by the parties;

6

7 (vi) "Terminal location" means locations that
8 have uniform grain and rice storage agreement approved
9 weights and official grain inspections available;

10

11 (vii) "Warehouse failure" means the insolvency
12 of a warehouse.

13

14 **11-48-103. Creation of grain indemnity account;**
15 **exemption; uses.**

16

17 (a) There is created an account to be known as the
18 grain indemnity account which shall consist of assessments
19 remitted by depositors pursuant to the provisions of this
20 chapter, fees paid to the account by warehouses as set forth
21 in this chapter and any interest or earnings on the grain
22 indemnity account balance.

23

1 (b) All assessments and fees shall be paid to the
2 department and shall be deposited in the grain indemnity
3 account.

4
5 (c) The grain indemnity account and accruing interest
6 shall be used exclusively for purposes of paying claimants
7 pursuant to this chapter.

8
9 (d) The state of Wyoming shall not be liable for any
10 claims presented against the grain indemnity account.

11

12 **11-48-104. Advisory committee; members; duties;**
13 **meetings; compensation; terms and vacancies.**

14

15 (a) A grain indemnity account advisory committee shall
16 be created, consisting of:

17

18 (i) The director of the Wyoming department of
19 agriculture or his designee, who shall serve as chairman;

20

21 (ii) The Wyoming state treasurer or his designee;

22

23 (iii) Three (3) active Wyoming depositors
24 selected by the board of agriculture;

1

2 (iv) Two (2) active Wyoming licensed warehousemen
3 selected by the board of agriculture.

4

5 (b) The members of the advisory committee shall be
6 reimbursed for mileage and per diem in the same manner and
7 amount as state employees.

8

9 (c) The duties of the advisory committee shall
10 include:

11

12 (i) To review and approve all substantiated
13 claims, including the amount of loss and payment of the
14 claims;

15

16 (ii) To review and approve administrative costs
17 of the account;

18

19 (iii) To review the fees and rates of assessment
20 and recommend any changes to the director.

21

22 (d) The advisory committee shall meet at least once
23 annually, with one (1) meeting being between July 1 and

1 August 15 and as often as they deem necessary to perform
2 their duties.

3

4 (e) The advisory committee shall be paid by the
5 department for expenses that are incurred while performing
6 their duties.

7

8 (f) The advisory committee members shall serve for a
9 three (3) year term with the initial terms being determined
10 by the board of agriculture as follows:

11

12 (i) The depositors shall serve one (1), two (2)
13 and three (3) year terms;

14

15 (ii) The warehousemen shall serve two (2) and
16 three (3) year terms.

17

18 (g) In the event of a position vacancy, whoever is
19 selected to fill the vacancy shall only finish the term for
20 which the vacancy occurred.

21

22 (h) No member may serve more than two (2) consecutive
23 terms.

24

1 (j) In the event a member of the advisory committee
2 is involved in any warehouse failure, his term shall be
3 suspended and he shall be replaced by another person who is
4 not involved in any current or pending warehouse failure.

5

6 **11-48-105. Assessment; rates; exceptions.**

7

8 (a) Grain shall be assessed as follows:

9

10 (i) Only once, at the time of the first point of
11 sale;

12

13 (ii) An amount not to exceed one-half percent
14 (0.5%) of the total gross dollar amount due to the
15 depositor, regardless of market price;

16

17 (iii) Grain sold under credit sale contracts
18 shall be assessed when the warehouseman makes payment to
19 the depositor;

20

21 (iv) A warehouseman that stores and sells grain
22 for a depositor at a terminal location shall collect the
23 assessment when the warehouseman makes payment to the
24 depositor;

1

2 (v) Grain pledged as collateral on a loan shall
3 be assessed at the time the loan is determined to be in
4 default. The amount of assessment shall be the greater of:

5

6 (A) The value of the grain at the time the
7 loan was made; or

8

9 (B) The amount of collateral the grain is
10 pledged for.

11

12 (b) Grain shall not be assessed when:

13

14 (i) Grain is sold from depositor to depositor;

15

16 (ii) Grain is sold between licensed grain
17 warehousemen;

18

19 (iii) Grain is sold for cash to someone other
20 than a warehouseman.

21

22 (c) An annual amount not to exceed one-half percent
23 (0.5%) of the total bonding amount for each licensed

1 warehouse shall be paid annually in conjunction with the
2 warehouse licensing requirements.

3

4 (d) No warehouseman shall be allowed to renew a
5 warehouse license until all fees and assessments are
6 remitted to the department.

7

8 **11-48-106. Collection and remittance of assessment;**
9 **bailment; interest earned; violations; penalties.**

10

11 (a) Any warehouseman who owes depositors for the sale
12 of grain shall be responsible for the collection of the
13 depositor's assessments and the remittance of the
14 assessments collected to the department.

15

16 (b) Payments shall be made no later than the twentieth
17 day of the month following the close of the calendar quarter
18 on a form prescribed by the department. The four (4)
19 calendar quarters in the year shall begin on the first day
20 of the months of January, April, July and October.

21

22 (c) Any warehouseman who does not remit the stated
23 fees or assessments shall be subject to an immediate audit
24 and may have his license suspended.

1

2 (d) Every warehouseman shall submit an assessment
3 report even if no assessment is required to be submitted.

4

5 (e) Every warehouseman shall post the current rate of
6 assessment as determined by the director.

7

8 (f) Every warehouseman shall collect and immediately
9 hold in trust the amount of assessments paid by or deducted
10 from payments to depositors. This principal amount is a
11 bailment and shall not be the property of the warehouseman.

12

13 (g) Failure by the warehouseman to submit an
14 assessment report shall result in a fine of one hundred
15 twenty-five dollars (\$125.00). Each day the warehouseman
16 does not submit the report shall be a separate offense.

17

18 (h) Failure by the warehouseman to submit all
19 collected assessments shall result in a fine of not more
20 than five hundred dollars (\$500.00). Each day the
21 warehouseman does not submit any assessment shall be a
22 separate offense.

23

1 (j) Failure by the warehouseman to collect assessments
2 shall result in a fine of not more than five hundred dollars
3 (\$500.00). Every transaction for which the warehouseman
4 failed to collect an assessment shall be a separate offense.

5

6 **11-48-107. Account limits.**

7

8 (a) Once attained, the minimum balance in the account
9 shall be five hundred thousand dollars (\$500,000.00). No
10 payment shall be made out of the account that would reduce
11 the balance below the minimum balance.

12

13 (b) The optimum balance in the account shall be
14 maintained between six million dollars (\$6,000,000.00) and
15 eight million dollars (\$8,000,000.00).

16

17 (c) Assessments and fees shall be collected quarterly
18 until such time as the account has reached the maximum
19 level of eight million dollars (\$8,000,000.00), at which
20 time the department shall notify all depositors and
21 warehousemen to stop remitting all assessments and fees,
22 until further notice from the department.

23

1 (d) If at any time the amount in the account is
2 reduced to less than six million dollars (\$6,000,000.00),
3 the department shall notify all depositors and warehousemen
4 that all assessments and fees shall again be remitted
5 beginning at the start of the next calendar quarter.

6

7 **11-48-108. Bonds; penalty, procedure; hearing.**

8

9 (a) The department may, when it has reason to believe
10 a warehouseman does not have the ability to pay depositors
11 for grain purchased or when it determines the warehouseman
12 does not have a sufficient net worth to outstanding
13 financial obligations ratio, require the warehouseman to
14 post a bond or other additional security in an amount to be
15 prescribed by rule.

16

17 (b) Failure of the warehouseman to timely post the
18 required bond or other security shall constitute grounds for
19 suspension or revocation of the warehouseman's or warehouse
20 license.

21

22 (c) The warehouseman may request a hearing regarding
23 the decision to increase the amount of security required or
24 the revocation or suspension of a license pursuant to this

1 section and may appeal the decision pursuant to the Wyoming
2 Administrative Procedure Act.

3

4 **11-48-109. Proof of claim; notice; procedure; hearing;**
5 **inspection; denial of claim.**

6

7 (a) In the event a warehouse fails, the department
8 shall give all depositors the opportunity to produce proof
9 of ownership of grain stored in the failed warehouse or
10 proof of contract with the warehouse. Any claim against a
11 failed warehouse shall include written evidence disclosing a
12 storage obligation or a sale or delivery of grain.

13

14 (b) The department shall make every effort to provide
15 notice to all depositors that may be affected by the
16 warehouse failure by:

17

18 (i) Sending a certified return receipt notice to
19 all known depositors at their last known address;

20

21 (ii) Posting a public notice of the warehouse
22 failure in a newspaper of general circulation in the county
23 where the failed warehouse is located;

24

1 (iii) Posting a public notice of the warehouse
2 failure in a newspaper of general circulation in the county
3 where any associated warehouse is located.

4

5 (c) Any depositor with a claim shall file his written
6 verified claim including any written evidence, with the
7 department.

8

9 (d) Any claim shall be received by the department
10 within ninety (90) days of the latest notice date of any
11 notice provided under subsection (b) of this section. Any
12 claim received by the department after this date shall be
13 denied.

14

15 (e) The advisory committee shall investigate each
16 claim and shall notify each claimant and the warehouseman of
17 the advisory committee's determination as to the validity
18 and amount of each claim.

19

20 (f) A claimant or warehouseman may request a hearing
21 on the advisory committee's determination within twenty (20)
22 days of receipt of written notification and a hearing shall
23 be held by the department within thirty (30) days of
24 receiving the request.

1

2 (g) In the event of a grain shortage, the department
3 shall determine each depositor's pro rata share of available
4 grain and the deficiency shall be considered as a claim of
5 the depositor. Each type of grain shall be treated
6 separately for the purpose of determining shortages.

7

8 (h) The advisory committee shall not approve or pay
9 any claim made on the account if the claim is based on
10 losses resulting from the deposit, sale or storage of grain
11 in an unlicensed warehouse.

12

13 **11-48-110. Claim payments; limitations.**

14

15 (a) Any warehouse failure that occurs prior to the
16 account initially reaching two million dollars
17 (\$2,000,000.00) shall not be eligible for a claim or any
18 reimbursement.

19

20 (b) In the event claims against the account would
21 reduce the total amount of the account to less than five
22 hundred thousand dollars (\$500,000.00), all approved claims
23 shall be prorated and paid to the fullest amount until the
24 minimum account balance is reached. All claims that are

1 prorated shall be paid in full when the account contains
2 sufficient funds to do so.

3

4 (c) Claims shall be paid to the fullest extent of the
5 account according to the following:

6

7 (i) A depositor with a claim against an unpaid
8 cash sale shall be paid an amount not to exceed ninety-five
9 percent (95%) of the unpaid portion of the sale;

10

11 (ii) A depositor with a claim against a state of
12 Wyoming negotiable warehouse receipt shall be paid an amount
13 not to exceed ninety percent (90%) of the value of the grain
14 receipted;

15

16 (iii) A depositor with a claim against a priced
17 contract shall be paid an amount not to exceed eighty-five
18 percent (85%) of the unpaid value of the contract, including
19 any deferred payment contracts;

20

21 (iv) A depositor with a claim against an open
22 storage account shall be paid an amount not to exceed
23 seventy-five percent (75%) of the determined value of the
24 grain, including all nonnegotiable warehouse receipts;

1

2 (v) A depositor with a claim against a credit
3 sales contract shall be paid an amount not to exceed
4 sixty-five percent (65%) of the determined value of the
5 grain;

6

7 (vi) All other claims relating to grain interests
8 shall be paid an amount not to exceed fifty percent (50%) of
9 any unpaid value and shall be paid only after all other
10 claims have been satisfied.

11

12 (d) To calculate a claim, the advisory committee shall
13 use the following:

14

15 (i) A claim against an open storage account
16 obligation shall be the market price at the time of the
17 warehouse failure;

18

19 (ii) A claim against a priced contract shall be
20 the price stated within a valid depositor contract;

21

22 (iii) A claim on a credit sales contract shall be
23 the market price of the grain at the time the contract was

1 entered into or the market price of the grain at the time of
2 the warehouse failure, whichever is less;

3

4 (iv) A claim against unpaid cash sales shall be
5 the price agreed upon between the depositor and the
6 warehouseman or the market price of the grain at the time of
7 the warehouse failure, whichever is less.

8

9 (e) Payment for any approved claim shall be made as
10 soon as possible after reconciliation of all approved
11 claims.

12

13 **11-48-111. Action against warehouseman.**

14

15 (a) Amounts paid from the account in satisfaction of
16 any approved claim shall constitute a debt and obligation of
17 the warehouseman or surety against whom the claim was made.
18 The director may bring a civil suit on behalf of the account
19 in the district court of the county in which the warehouse
20 is located to recover from the warehouseman or surety the
21 amount of the payment made from the account, together with
22 costs and attorney's fees incurred in maintaining the civil
23 suit.

24

1 (b) In the event the department initiates an action
2 against a warehouseman or surety the department's claim
3 shall accrue and relate back to the time each depositor
4 receiving an account payment incurred a loss in the
5 warehouse.

6

7 **11-48-112. Claim against warehouseman; remedies.**

8

9 The department may deny, suspend or revoke the license of
10 any warehouseman against whom a claim has been made,
11 approved and paid from the grain indemnity account.
12 Proceedings for the denial, suspension or revocation shall
13 be subject to the Wyoming Administrative Procedure Act.

14

15 **11-48-113. Director's discretion.**

16

17 Nothing in this chapter shall be construed to require the
18 director or his authorized representatives to file a civil
19 suit for a violation of this chapter when he believes the
20 public interest is best served by a suitable warning.

21

22 **11-48-114. Warehouse failure; seizure; liquidation;**
23 **temporary employment; associated warehouses; notice;**
24 **investigation.**

1

2 (a) Upon failure of a licensed warehouse the
3 department shall have all powers as trustee for the benefit
4 of claimants as established under this chapter, including
5 but not limited to the following:

6

7 (i) To seize or otherwise gain control or
8 possession of grain assets, equity assets and any other
9 principal assets directly related to the failed warehouse
10 or any associated warehouse;

11

12 (ii) To liquidate any assets as necessary to pay
13 all claims and expenses and to reimburse the account for
14 any loss;

15

16 (iii) To contract with or employ temporarily as
17 many persons as deemed necessary to comply with the
18 enforcement of this chapter with any costs so incurred to
19 be paid from the account.

20

21 (b) Any warehouse operating under a separate
22 warehouse license but under the same corporate umbrella as
23 a failed warehouse shall be considered an associated
24 warehouse and shall also be considered to have failed.

1

2 (c) Immediately upon the failure of a warehouse the
3 department shall:

4

5 (i) Post notice at all locations of the failed
6 warehouse and any associated warehouse stating the
7 warehouse has experienced a failure and the license has
8 been suspended;

9

10 (ii) Immediately take physical control and
11 possession of the failed warehouse, including but not
12 limited to, offices and grain storage facilities, grain
13 stored in the warehouse, books, records, electronic
14 equipment and any other property necessary or desirable to
15 liquidate grain and equity assets;

16

17 (iii) Give public notice and notify all
18 potential claimants by certified mail of the warehouse's
19 failure and the procedures necessary to file a claim;

20

21 (iv) Perform an investigation of the failed
22 warehouse.

23

1 (d) If at any time it appears that the costs of
2 seizing or liquidating any assets relating to the failed
3 warehouse or the warehouseman equals or exceeds the
4 expected recovery to the account the department may elect
5 not to pursue seizure or liquidation.

6

7 **11-48-115. Preemption.**

8

9 The department shall have the position of a secured
10 creditor subject to prior secured rights to all warehouse
11 assets, ahead of all other interests after a warehouse
12 failure. The department shall not be liable for any
13 interests other than its own at any time.

14

15 **11-48-116. Cancellation; bonds and insurance.**

16

17 Every warehouseman shall immediately inform the department
18 of any cancellation of the warehouseman's bond or of the
19 warehouse insurance.

20

21 **11-48-117. Notice of closure.**

22

23 (a) Any licensed warehouseman seeking to cease his
24 operations shall inform the following by certified mail,

1 return receipt requested, at least sixty (60) days prior to
2 the final day of business:

3

4 (i) All holders of warehouse receipts,
5 negotiable and nonnegotiable;

6

7 (ii) All persons having grain in open storage at
8 the warehouse;

9

10 (iii) All persons having unpaid or deferred
11 priced contracts;

12

13 (iv) All persons with credit sales contracts;

14

15 (v) The department.

16

17 (b) All grain stored or receipted shall either be
18 transferred to a separate licensed warehouse, at the cost
19 of the transferring warehouse, or sold depending on the
20 depositor's wishes. The depositor may leave his grain in
21 the warehouse, provided a written agreement, signed and
22 dated by the depositor, buyer and seller is placed in his
23 file. All unpaid priced contracts shall be settled. All

1 credit sales contracts shall be priced and settled or
2 rescinded with the depositor receiving title to the grain.

3

4 (c) The account shall not be liable for claims filed
5 against a warehouse in good standing who has voluntarily
6 relinquished its license if the claims are not filed with
7 the department within six (6) months of the closing of the
8 warehouse.

9

10 **11-48-118. Deposits as bailment.**

11

12 Whenever any grain is delivered to a licensed warehouse and
13 the receipt issued provides for the return of a like amount
14 of the like kind, grade and class of grain to the receipt
15 holder, the delivery shall be a bailment and not a sale of
16 the grain. In no case shall the grain be liable to seizure
17 upon process of any court in an action against the
18 warehouseman, except an action by the legal holder of the
19 receipt to enforce the terms of the receipt. In the event
20 of a warehouse failure, the grain shall be applied
21 exclusively to the redemption of any outstanding receipts
22 covering the grain stored with the warehouseman. The grain
23 on hand in any warehouse shall be applied to the redemption

1 and satisfaction of receipts issued pursuant to the
2 warehouse license.

3

4 **11-48-119. Limited application.**

5

6 (a) The provisions of this chapter shall not apply to
7 any warehouse covered by a license issued under the United
8 States Warehouse Act.

9

10 (b) Any warehouseman licensed under the United States
11 Warehouse Act may voluntarily participate in the account
12 and shall be subject to all provisions of this chapter.

13

14 **Section 2.** There is appropriated from the general
15 fund to the department of agriculture twenty thousand
16 dollars (\$20,000.00) for the biennium to pay the costs of
17 administering the grain indemnity account, including
18 reimbursement for members of the advisory committee.

19

1 **Section 3.** This act is repealed effective June 30,
2 2012.

3

4 **Section 4.** This act is effective July 1, 2006.

5

6

(END)